

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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MICHAEL J. SUDORE,

Plaintiff,

04-CV-6047T

v.

**DECISION  
and ORDER**

SUM 41, et al,

Defendants.

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Plaintiff, Michael Sudore ("Sudore"), has filed suit against defendants SUM 41, Deryck Whibley, Steve Jocz, Dave Baksh, Jay McCaslin, ("the SUM 41 defendants"), Greig Nori and Lucifer Productions ("the Nori defendants"), The Island Def Jam Music Group, a division of the UMG Recordings Inc., Universal Music & Video Distribution Corp. ("the Universal defendants") and Aquarius Records. Sudore alleges that defendants used his image for their pecuniary gain, and to his reputation's detriment, without his consent or just compensation, in violation of New York Civil Rights Law §§ 50 and 51. On November 30, 2004, Sudore moved to amend his complaint to include an additional claim for intentional infliction of emotional distress.

By order dated July 30, 2004, I referred this action to Magistrate Judge Marian W. Payson for pretrial proceedings,

following which plaintiff filed several motions, including a motion to amend his complaint.

By Report and Recommendation dated September 12, 2005, Judge Payson recommended that plaintiff's motion be denied. Although the parties were advised of their right to file objections to Judge Payson's Report and Recommendation, the potential consequences of failing to file objections, and the deadline for filing such objections, none of the parties have filed objections.

Because the parties failed to file objections to the September 12, 2005 Report and Recommendation, they have waived their right to a de novo review pursuant to 28 U.S.C. § 636(b)(1). U.S. v. Male Juvenile, 121 F.3d 34, 38 (2d Cir. 1997). Additionally, it is the rule in this Circuit that where the parties have received notice of the consequences of failing to object to a Magistrate Judge's Report and Recommendation, such a failure will preclude any further review of a Decision adopting a Magistrate Judge's Report and Recommendation. Id. See also, Small v. Secretary of Health and Human Services, 892 F.2d 15, 16 (2d Cir. 1989) ("failure to object to a magistrate's report operates as a waiver of any further judicial review of the magistrate's decision").

I find that the Magistrate properly determined that plaintiff's motion be denied, and because there is no clear

error in the Magistrate's Report and Recommendation, I adopt Judge Payson's September 12, 2005 Report and Recommendation in its entirety.

ALL OF THE ABOVE IS SO ORDERED.

S/ Michael A. Telesca  
MICHAEL A. TELESCA  
United States District Judge

Dated: Rochester, New York  
October 12, 2005